IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
First Appeal No.1559 of 2007

Shri Narain Singh Shomer Singh. .. .. Appellant
(Orig. Applicant)

v/s.

The Employees State Insurance Corporation. .. Respondent
(Orig. Opponent)

Mr.P.M. Bhagat for Appellant.

Mr.H.V. Mehta for Respondent.

CORAM : SMT.ROSHAN DALVI, J.

DATED : 6th June, 2007

P.C. :

1. The Appeal challenges the order passed by the learned Trial Court on an Application for restoration and condonation of delay in taking out such Application. Initially an ex-parte order came to be passed against the Appellant (original Applicant) since the Appellant remained absent and gave no instructions to his Advocate to conduct the proceedings on his behalf. It is the case of the Appellant that the Appellant contacted his Advocate on his old address which, though continued in the name of the Appellant, was not used by the Appellant. It is only after the notice of the Respondent (original Opponent) came to be received by the Appellant on 24.7.2006 that the Appellant made inquiries and learnt that an ex-parte order was passed.

2. A sum of Rs.One Lac is claimed by the Respondent

under the Employees State Insurance Act, 1908. The mandatory amount of 50% was deposited which has been utilised by the Respondent for payment to the employees of the Appellant. The remaining 50% of the amount which aggregates to Rs.50,000/- requires to be adjudicated upon merits. The Appellant desires to be heard on merits after gross delay of the Appellant in contacting the Advocate and finding out what transpired in his litigation.

3. It is argued on behalf of the Respondent, and justifiably so, that if the Appellant had himself contacted his Advocate, these things would not have come to pass. The employees deserve to be paid. Only the Appellant's case on merits requires to be considered. No merits of the Appellant's case are shown to the Court at present. The Appellant is required to deposit additional amount to secure it for his employees if he desires to be heard after such gross delay. The only equitable order which can be passed is for deposit of some of the remainder of the amount which would be adjudicated upon at the insistence of the Appellant himself. Hence, the following order:-

O R D E R

. Upon the Appellant depositing a further amount of Rs.25,000/- in the Trial Court within four weeks from today, initial Application of the Appellant in the Trial Court

shall be placed on Board for disposal on merits. If the amount is not deposited within four weeks from today, the Appeal shall stand dismissed.

4. Appeal disposed of accordingly.

(ROSHAN DALVI, J.)